

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION	MDL 2804
THIS DOCUMENT RELATES TO:	Case No.: 1:17-md-2804
<i>ALL CASES</i>	Judge Dan Aaron Polster

**REPORT ON  
NEGOTIATION CLASS**

## **Introduction**

On September 11, 2019, the Court entered an order certifying a negotiation class, appointing Negotiation Class Counsel, and approving the proposed notice and opt out procedures (the “Certification Order,” ECF No. 2591, ¶¶ 3, 7, & 11-12). By the same order, the Court approved Epiq Global (“Epiq”) as the Class Notice provider and ordered Epiq to provide a report on the Class Notice program. *Id.*, ¶ 11.

As set forth in the accompanying Declaration of Cameron Azari (“Azari Decl.”), Director of Legal Notice for Hilsoft Notifications (a unit of Epiq), the Class Notice program has been a success and has provided more than adequate notice to members of the Negotiation Class. Moreover, the response to the Class Notice program shows that class members of all sizes (from small towns to major metropolitan areas) throughout the country received and thoughtfully considered the Class Notice. Azari Decl., ¶ 34. Although additional opt-out forms postmarked by the November 22, 2019 deadline are being received, as of November 27, 2019, more than 98% of the 34,458 class members have remained in the Negotiation Class. *Id.*, ¶¶ 32-33.

## **The Class Notice Program**

The approved form of Class Notice was sent by U.S. mail to the more than 34,000 Negotiation Class members, more than 10,000 of which also were sent the Class Notice by email. Azari Decl., ¶¶ 14, 19. Only a small portion of the mailed notices (less than 3%) ultimately were deemed undeliverable after corrections to addresses and re-mailings were made. *Id.*, ¶¶ 15-19.

Under the direction of Class Counsel, Epiq also set up an informational website ([www.opioidsnegotiationclass.info](http://www.opioidsnegotiationclass.info)) that was accessed by more than 15,000 visitors. *Id.*, ¶ 23. In addition, a telephone number and email were made available to allow class members to submit

questions, to which Negotiation Class counsel responded. *Id.*

**Participation Rate and Requests for Exclusion to Date**

The deadline for Negotiation Class members to submit a request for exclusion from the Negotiation Class was November 22, 2019. Certification Order, ¶ 12. As of November 27, 2019, Epiq had received 580 exclusion requests by U.S. mail and/or by email. Azari Decl., ¶ 32. Of these, 23 appear to be from entities that are not class members. *Id.* Another 16 exclusion requests were rescinded by written request. *Id.* Thus, based on requests received as of November 27, 2019, more than 98% of the 34,458 class members have remained in the class, including entities with populations under 20 and others as high as 10 million.

By contrast, the total number of entities that have requested to opt out of the Negotiation Class is just 541—approximately 1.6% of the total class of 34,458. And, while small in number, the opt-out requests provide further evidence that the Class Notice program has been robust and effective. Opt-out requests were received from cities and counties in 43 states and the District of Columbia, ranging in population from 20 to about 4.2 million. Azari Decl., ¶ 32.

Because the November 22, 2019 exclusion request deadline allows mailed requests to be postmarked by that date, Epiq anticipates it will continue to receive timely exclusion requests through December 6, 2019 (two weeks after the postmark deadline). Azari Decl., ¶ 33. However, it believes the vast bulk of the exclusion requests likely have been received at this point. *Id.*

**Proposal for Rule 23(c) Class Definition Order**

The Certification Order did not set a date for submission of a proposed order under Fed. R. Civ. P. 23(c) confirming the entities that are included in and that are excluded from the Negotiation Class. Negotiation Class Counsel anticipates filing such a proposed order on or

before January 10, 2020. This will allow time to confirm a fairly precise number of exclusion requests, including confirmation of further requests to rescind exclusion (and remain in the Negotiation Class).<sup>1</sup>

Dated: December 2, 2019

Respectfully submitted,

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<sup>1</sup> Requests to rescind a prior opt-out and, instead, to remain in the Negotiation Class can be made by email to [info@OpioidsNegotiationClass.info](mailto:info@OpioidsNegotiationClass.info) by an authorized representative clearly stating that “X city or county hereby withdraws its request for exclusion and confirms that it wishes to remain in the Negotiation Class.”

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on December 2, 2019, I caused the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send a notification to all counsel of record.

*s/ Christopher A. Seeger*

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CHRISTOPHER A. SEEGER